

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

PITTSFIELD GENERATING COMPANY, L.P.,

Plaintiff,

v.

DEVON CANADA CORPORATION,

Defendant.

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) Civil Action No:
) 04-30128-MAP
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**DEFENDANT DEVON CANADA CORPORATION'S MOTION TO
STAY IN DEFERENCE TO A PENDING FOREIGN PROCEEDING**

Pursuant to this Court's inherent authority to stay an action in deference to a pending foreign proceeding, defendant Devon Canada Corporation ("Devon") hereby moves to stay this action pending the ultimate resolution of a parallel action in Calgary, Alberta, Canada. See Devon Canada Corp. v. PE-Pittsfield LLC, et al., No. 0401-10854 (Court of Queen's Bench of Alberta, Canada) Reasons for Judgment of the Honourable Justice Bryan E. Mahoney (Sept. 13, 2004) (attached as Ex. A to the accompanying Memorandum of Law in support of this Motion). Devon has contemporaneously filed a Motion to Dismiss for Lack of Personal Jurisdiction and Forum Non Conveniens pursuant to Federal Rule of Civil Procedure 12(b)(2). That motion need not be reached if the Court grants herein the Motion to Stay in Deference to a Pending Foreign Proceeding.

In support of its Motion to Stay, Devon states as follows:

1. On September 13, 2003, the Alberta court in the parallel proceeding determined that it had jurisdiction over the case and that Alberta was the most convenient forum to litigate this dispute. Id. ¶ 23.

2. The plaintiff and defendant in the Massachusetts action – Devon and Plaintiff Pittsfield Generating Company, L.P. (“PGC”) – are both parties to the Alberta action. All of the claims for declaratory relief that PGC raises here are raised in Alberta (with the exception of paragraph A of the Complaint which Devon does not in any event contest).

3. Judicial efficiency favors staying this action. The Alberta forum is likely to render a prompt disposition and, indeed, has moved much further along than the Massachusetts action. Staying this case to allow the Alberta suit to proceed will avoid piecemeal litigation, and the Alberta court is a more convenient forum as the bulk of the pertinent evidence and key expert witnesses are located in Alberta. Further, the Alberta court will provide adequate relief because PGC can raise its claims for declaratory relief in Alberta.

4. Prejudice would not befall PGC if the Alberta court resolved this dispute because PGC has been conducting business in Alberta as a gas purchaser, retained counsel in Calgary in connection with the subject Gas Purchase Agreement, and has been a defendant and a counterclaim plaintiff in previous litigation in Alberta regarding a gas purchase agreement related to the same cogeneration facility involved in the present case.

A Memorandum of Law in support of this Motion is included herewith and incorporated herein by reference.

WHEREFORE, defendant Devon Canada Corporation respectfully requests that the Court grant this Motion, and stay Plaintiff Pittsfield Generating Company, L.P.’s Complaint for Declaratory Judgment pending the ultimate resolution of a parallel action in Calgary, Alberta, Canada.

Dated: February 17, 2004

Respectfully submitted,

/s/ Anita B. Bapooji

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Of Counsel

Devon Canada Corporation

CERTIFICATION UNDER LOCAL RULE 7.1

I certify that on Wednesday, September 15, 2004, pursuant to Local Rule 7.1, counsel for the parties have conferred in good faith regarding Defendant Devon Canada Corporation's Motion to Stay in Deference to a Pending Foreign Proceeding and were unable to resolve or narrow the issues.

/s/ Anita B. Bapooji

Anita B. Bapooji

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Defendant Devon Canada Corporation's Motion to Stay in Deference to a Pending Foreign Proceeding was served, via hand delivery on the 17th day of September, 2004 on the following:

Robert J. Muldoon
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/s/ Anita B. Bapooji

Anita B. Bapooji